IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4657 of 1990

Shri Datta Shikshan Prasarak
Mandal & anr. Petitioners
Vs.
Shri Dinkar Krishna Gawde Respondent

Mr.M.S.Topkar for petitioners.

Mr.V.S.Masurkar with Mr.G.S.Kulkarni and Ms. Sonali Joshi for respondent.

CORAM: B.H.MARLAPALLE,J.

August 29, 2006.

ORAL JUDGMENT:

1. This petition filed by the Management and the Head Master of Janta High School at Shirol, Dist. Kolhapur assails the judgment and order dated 11/9/1990 of the School Tribunal thereby allowing Appeal No.148 of 1987. The said appeal was filed by the present respondent against the order of termination dated 3/10/1987 by way of punishment for an act of major misconduct as defined under the MEPS Rules, 1981 and the appeal was filed under Section 9 of the MEPS (Condition of Service) Regulation Act, 1977 (for short "the Act").

2. The brief facts are that the Respondent who was holding the qualifications of B.Sc., B.Ed. came

to be appointed as an Assistant Teacher in the Janata High School at Shirol run by Shri Datta Shikshan Prasarak Mandal, a Public Charitable Trust (old Society for short) and also a Society registered under the Societies Registration Act, 1860. The Petitioner no.2-Headmaster is one of the five Trustees of the said Society. The respondent was confirmed as Assistant Teacher in June 1975. He came to be promoted and appointed as Supervisor of the said School in the year 1983-84 and was issued a show cause notice dated 19/1/1987 in respect of 11 allegations. He replied to the said show cause notice on 13/2/1987 and denied the allegations and he concluded the said reply by alleging that the show cause notice was issued to him under a misbelief that the New English High School started by Shri Shahu Shikshan Prasarak Mandal at Shirol was started as a rival competing school. He also offered to resign from the post of Secretary of Shri Shahu Shikshan Prasarak Mandal (new Society for short), another Society/Trust. The respondent had become the Secretary of that Trust on 30/9/1979. The management addressed a letter dated 27/2/1987 to the respondent by noting that he had offered to resign from the post of the Secretary of the new Society and informed him

that there were other allegations against him as well and they were serious in nature and, therefore, it was decided to hold an enquiry into the said allegations. He was informed that a charge-sheet would be served on him. Under Rule 36(1) he was also called upon to nominate his representative on the enquiry committee and accordingly by his letter dated 21/3/1987 he nominated Shri K.S. Sankpal, who was working as an Assistant Teacher at Smt.L.P.Girls' High School, Jaisingpur and the said Mr.Sankpal gave his consent by addressing a letter to the management on 21/3/1987. The management nominated its representatives Mr.H.Y. Gawade as the Convener and Mr.B.S. Mudbidrikar (a State Awardee Teacher). Thus the enquiry committee was made of Mr. H.Y. Gawade (Convener), Mr.B.S. Mudbidrikar (State Awardee Teacher) and Mr. K.S. Sankpal (Representative of the Respondent). The charge-sheet was issued to him on 26/3/1987 and the same was replied by the respondent on 4/4/1987 and he denied the charges. Therefore, the enquiry proceeded and the first sitting appears to have commenced on 24/4/1987. In the subsequent sittings apart from these three members, the head of the school or the Secretary of the old Society and the respondent teacher appeared

and exchanged documents. The enquiry was concluded on 17/6/1987. When it came to the submission of findings, the enquiry committee was divided in its opinion. As per the representative of the respondent the charges were not proved as there was no material in support of any of the charges and in any case the respondent becoming the Secretary of the new Society was not an act of misconduct. Whereas the other two members of the enquiry committee in their report dated 28/6/1987 held that the charges were proved against the respondent - teacher and the charges were of serious nature. Consequently they recommended the termination of service by way of punishment. By consolidating the report dated 28/6/1987 of the majority members and the report of Mr. Sankpal dated 29/6/1987 a common report of the enquiry findings was made on 8/7/1987 and a copy of the same was also made over to the respondent. By the order dated 3/10/1987 the respondent came to be dismissed from service with effect from 5/10/1987.

3. The respondent in his appeal before the School Tribunal challenged the termination on the grounds that it was illegal, improper and misconceived, it was against the principles of natural justice, the

management acted against him with malice, the charges levelled against him were frivolous, false, baseless and imaginary, the constitution of the enquiry committee was illegal and improper, he was not given any opportunity of defending himself before the enquiry committee, the members of the enquiry committee were biased and acted with prejudice against him, the enquiry committee did not follow the MEPS Rules, he was not allowed to lead evidence and examine witnesses in support of his case before the enquiry committee, no documents were placed before the committee in support of the charges levelled against him, there was no reason for the head of the school to remain present in the enquiry and the members of the enquiry committee failed to apply their mind to the facts and circumstances of the case while holding him guilty. The appellant further stated that the convener of the meeting Mr.H.Y. Gawade was admitted to the hospital on 23rd July 1987 and he died while in the hospital on 16th September 1987. As per the appellant the enquiry report holding him guilty was neither prepared nor was signed by Mr. Gawade and, therefore, the said report could not be a majority opinion so as to hold him guilty of the charges levelled against him. He went

to the extent of alleging that the enquiry report was prepared after the demise of Mr. Gawade by way of an afterthought and it was back dated. The enquiry conducted against him was not with an open mind but with a predetermined decision to award him the punishment of dismissal from service.

4. The management filed its reply before the School Tribunal and opposed the appeal. It was submitted that Janta High School had started in the academic year 1967-68 by Shri Datta Shikshan Prasarak Mandal (the 1st petitioner). It was reiterated that the charges levelled against the respondent were proved in the enquiry conducted by the enquiry committee duly constituted as per the provisions of Rule 36(2) of the MEPS Rules, the principles of natural justice were duly followed and as the findings were to be recorded only on the basis of the admitted documents, neither of the parties preferred to adduce oral evidence before the said committee. The management admitted that though there was no presenting officer, the head of the school or the Secretary of the old Society remained present in the enquiry committee proceedings to submit or receive documents on behalf of the school / Trust. The

written statement supported the action of dismissal from service. It was also pointed out that Mr.H.Y. Gawade was hospitalised on 23/7/1987 and he expired on 16/9/1987 but the enquiry report was dated 8/7/1987 i.e. much before Mr.Gawade was admitted in the hospital.

5. The School Tribunal after considering the arguments of both the parties, the findings of the enquiry committee and its constitution etc. held in the impugned judgment that there was breach of Rules 36(2), 37(1), 37(2)(a)(i), 32(2)(a)(iii), 32(2)(a)(ii), 37(2)(d)(ii), 37(4) and this was conceded by the learned Advocate for the management before it. So far as the findings of the majority Committee members are concerned the Tribunal observed that it was unable to understand as to who were examined as witnesses to prove the charges against the appellant and who produced the documents before the Enquiry Committee and in the absence of any substantial evidence for proving the said documents it was not permissible for the majority members to act upon the said documents. The source of the documents was also not known and the majority members were totally ignorant about the procedure for

conducting the enquiry, recording evidence and for production as well as proving of the documents. Under such circumstances there was no legal evidence to hold that the charges against the appellant were proved, concluded the Tribunal.

6. The School Tribunal framed the following issues and answered them accordingly:

(1) Whether the Management of respondent no.1 - Mandal had complied with the provisions contained in rule 33 of the Mah. Employees of Private Schools (Conditions of Service) Rules, 1981 in regard to inquiry? No.

(2) Whether the inquiry committee has been properly constituted as laid down in rule 36(2)(a) of the Rules of 1981? Yes.

(3) Whether the Inquiry Committee has followed the due and proper procedure of conducting the inquiry against the appellant? No.

(4) Whether the appellant was given reasonable opportunity to defend himself before the Inquiry Committee? No.

(5) Whether the findings of the majority members of the Inquiry Committee are supported by legal evidence? No.

(6) Whether the order of termination dt.3.10.87 is legal and valid? No.

(7) Whether the appellant is entitled to reinstatement and back wages? Yes.

. Section 4(6) of the Act states that no employee of a private school shall be suspended, dismissed or removed or his services shall not be reduced in rank by the management, except in accordance with the provisions of the Act and the Rules made in that behalf. The MEPS Rules, 1981 have been framed under the Act and Rule 28 deals with the removal or termination of service of a temporary employee other than on probation - a permanent employee and clause (5) of the said Rule states that an employee shall be liable to be punished on one or

more of the following grounds viz. (a) misconduct; (b) moral turpitude; (c) wilful and persistent negligence of duty and (d) incompetence. For the purpose of Rule 28(5) the terms misconduct, moral turpitude, wilful negligence of duty and incompetence have been defined as under:

(a) "Misconduct" shall include the following acts, namely:

(i) breach of the terms and conditions of service laid down by or under these Rules;

(ii) violation of the code of conduct; and

(iii) any other act of similar nature

(b) "Moral turpitude" shall include the following acts, namely :

(i) immodest or immoral behaviour with a female or male student or employee; and

(ii) any other act of similar nature.

(c) "Wilful negligence of duty" shall include the following acts namely:

(i) dereliction in or failure discharge, any of the duties prescribed by or under these rules;

(ii) persistent absence from duty without previous permission; and

(iii) any other act of similar nature

(d) "Incompetence" includes the following acts, namely:

(i) failure to keep up academic progress and upto date knowledge in spite of repeated instructions in that behalf and provisions of facilities;

(ii) failure to complete the teaching of the syllabus determined for the year within the fixed periods for reasons not beyond his control; and

(iii) any other act of similar nature.

. Rule 29 deals with penalties viz. (a) warning, reprimand or censure, (b) withholding of an increment for a period not exceeding one year, (c) recovery from pay or some other amount as may be due to him of the whole or part of any pecuniary loss caused to the Institution by negligence or breach of the orders, (d) reduction in rank and (e) termination of service. Rule 31 sets out the classification of penalties i.e. minor penalties and major penalties. Reduction in rank and termination of service are stated to be major penalties. Rule 33 prescribes the procedure for inflicting major penalties. Sub-rule (1) is relevant for the present purpose and, therefore, it is reproduced as under:

"33(1) If an employee is alleged to be guilty of any of the grounds specified in sub-rule (5) of rule 28 and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee

under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the junior College of Education and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order."

. Rule 36 speaks of the enquiry committee to be constituted. As per sub-rule (1) the enquiry will be conducted by the enquiry committee and the composition of the enquiry committee also has been set out in sub-rule (2). In the case of an assistant teacher the composition of the enquiry committee is as under:

(i) one member from amongst the members of the management to be nominated by the management or by the president of the management if so authorised by the management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the management; (ii) one member to be nominated by the employee from amongst the employees of any private school; and (iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred.

. Rule 37 deals with the procedure of enquiry and the same to the extent relevant is reproduced hereinbelow:

"37(1) - The Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convenor of the Inquiry Committee and also forward copies thereof to the

employee or the Head concerned by registered post acknowledgement due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.

37(2)(a) Within 10 days of the receipt of the copies of charge-sheet and the statement of allegations by the employee or the Head, as the case may be-

(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convenor of the Inquiry Committee in person or send it to him by the registered post acknowledgement due.

(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convenor of the Inquiry Committee the names of witnesses whom they

propose to so examine.

37(2)(d)(i) The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee

(ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross-examine the witnesses examined on behalf of the Management.

37(4) The Convenor of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgement due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.

7. In the instant case the Tribunal held that the

enquiry committee was properly constituted and, therefore, Rule 36(2)(a) was duly followed. However, as per the Tribunal Rule 36(2) was not complied with. As per sub-rule (2) of Rule 36 if the Chief Executive Officer or the President as the case may be, finds that the explanation submitted by the employer or the head referred to in sub-rule (1) is not satisfactory, he shall place it before the management within 15 days from the date of receipt of the explanation. The management shall in turn decide within 15 days whether an enquiry be conducted against the employee and if it decides to conduct the enquiry, the enquiry should be conducted by the enquiry committee constituted in the manner set out. The Tribunal noted that when the respondent - teacher submitted explanation dated 13/2/1987 and it was received by the management on 14/2/1987, it was found to be unsatisfactory and, therefore, it was necessary for the President or the Secretary to place the same before the management within 15 days from 14/2/1987. It was further necessary for the management to decide within 15 days whether an enquiry should be conducted against the teacher and as there was nothing on record to show that the appellant's explanation was placed before the management, the Tribunal held that

the management failed to comply with the requirements of Rule 36(2) of the Rules.

8. The Scheme of Rules 36 and 37 read together mandates that the explanation submitted to the charge-sheet is considered by the management and if found to be unsatisfactory and the management decides to proceed against the delinquent teacher, an enquiry will have to be conducted by a committee as stated in the manner prescribed. The committee while conducting the enquiry will follow the procedure as set out so as to comply with the principles of natural justice and full opportunity will be given to the delinquent employee to defend his case including an opportunity to cross-examine the management's witnesses, produce his own witnesses and also place on record documentary evidence as well as demand certain documents to be placed on record if found relevant. The compliance of such rules and the failure partly thereof fell for consideration by the Apex Court in the case of State Bank of Patiyala & ors. Vs. S.K. Sharma **[AIR 1996 SC 1669]** and it was stated, inter alia, as under:

"... There may indeed be any number of

varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and equiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice" / "no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin,(Supra). It would be a case falling under the first category and the order of dismissal would be invalid - or void, if one chooses to use that expression (Calvin v. Carr, (Supra). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer’s report (Managing Director, ECIL v. B. Karunakar, (supra) or without affording him a due opportunity of

cross-examining a witness (K.L.Tripathi, (supra) it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct in the light of the above decision to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar, (supra) should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid."

9. Regarding the principles of natural justice,

in Jankinath Sarangi v. State of Orissa **[(1969) 3 SCC 392]** the Supreme Court observed as under:

> "... There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right...."

. In the case of Union of India & ors. v. P.K. Roy & ors. **[(1968) 2 S.C.R. 186]** the Apex Court reiterated, "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the person affected, the scheme and policy of the statute and other relevant circumstances disclosed in a particular case."

. In K.L. Tripathi vs. State Bank of India **[AIR 1984 SC 273]** a three-Judge Bench stated as

under:

> "It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

10. In short the departmental enquiries instituted by way of disciplinary measures against the delinquent employees must meet the basic concept of fair-play, audi alteram partem and the domestic tribunal must be constituted in keeping with the rules. In the instant case the show cause notice was issued on 19/1/1987 which was replied on 13/2/1987. The charge-sheet was issued out 26/3/1987 setting out the eleven charges. By his reply dated 4/4/1987 he denied that he was guilty of any act of misconduct or the code of discipline. After his reply to the show cause notice was received on 14/2/1987 and prior to the said reply, by letter dated 4/2/1987 he was already informed the management's decision to constitute an enquiry committee. In the show cause notice dated 19/1/1987 he was called upon to submit his explanation within two weeks and the said period had expired by 3rd February 1987. The management, therefore, communicated its decision on 4/2/1987 for constituting an enquiry committee and calling upon the respondent - teacher to intimate the name of his nominee. Respondent had received this letter dated 4/2/1987 is also obvious from the reply dated 13/2/1987 in which he has referred to the said letter

of the management. He had asked for two weeks' time and by letter dated 27/2/1987, on considering his reply dated 13/2/1987 to the show cause notice, the management once again informed him its decision to constitute enquiry committee to enquire into the allegations against the respondent - teacher. Vide his letter dated 21/3/1987 for the first time the teacher intimated the name of his representative i.e. Mr.K.S. Sankpal. Rule 36(2) compliance is an internal procedure of the management. The said provision states that the explanation submitted by the employee shall be placed before the management within 15 days from its receipt. If it is not placed within the stipulated time of 15 days, no prejudice is likely to be caused to the teacher. There are instances where it may be seen that the explanation is placed before the management on the very same day or within few days. The limit of 15 days is an outer limit. The management may in turn decide to conduct an enquiry on the same day or within few days and the outer limit is 15 days. These are basically the matters regarding the business of the society. It is not mandatory that the management is required to prove that such a compliance was done before the enquiry proceedings started and, therefore, the view

taken by the Tribunal that there was breach of Rule 36(2) is unsustainable, more so when in the appeal memo submitted before the School Tribunal no such plea was raised. On the other hand it was alleged by the respondent in his appeal memo that the management of the petitioner is one man show by Shri D.G.Kalekar.

11. It is an admitted fact that the show cause notice was received and replied to by the respondent and same is the case in regard to the charge-sheet levelling 11 charges. The documents in respect of these charges were submitted before the Enquiry Committee by the Head Master and in turn the respondent - teacher as well submitted some documents in support of his case. These documents are Exhibits 21/14, 21/16 and 21/19. Rule 37(1) states that the management shall prepare a charge-sheet pointing out the specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be to the Convenor of the Enquiry Committee and also forward copies thereof to the employee. These copies were received by the respondent during the enquiry. No dispute has been raised about

non-receipt of these documents in the enquiry proceedings though the teacher was represented by Shri Sankpal who was nominated by him. Inspite of these facts the School Tribunal held that the requirements of Rule 37(1) were not complied with.

These findings are required to be set aside.

12. It is seen from the enquiry proceedings in which the respondent - teacher along with his nominee participated throughout, that the case of the management, so also the defence of the teacher was solely dependent upon the documents. The eleven charges levelled against the respondent in brief stated as under:

> "(1) You have got registered one Mandal (one institution) by name Shri Shahu Shikshan Prasarak Mandal, Shirol, Taluka Shirol, Dist. Kolhapur on 30/9/1978, in the office of the Public Trust. You are functioning as a Secretary of the said Mandal. However, you have not furnished any kind of written information in that regard either to our institution or school, and you have not obtained permission from us. Hence, you have

breached the rules.

(2) You, though the aforesaid institution are running a school viz. New English School, Shirol, Tal. Shirol, Dist. Kolhapur on unaided basis. It is found that you are looking after the entire management, administration and day to day affairs of the said school. You have not informed in this regard to our institution or school nor you have obtained permission from the institution or school. Therefore, you have breached the rules.

(3) As you have entirely dedicated yourself to Shri Shahu Shikshan Prasarak Mandal, Shirol and New English School, Shirol you could not fulfil the responsibility in respect of Janata High School, Shirol entrusted to you as a Supervisor and Teacher thereof. On the contrary, this school has suffered a loss to a great extent because of you. You have not satisfactorily discharged the work of Supervisor and of Teaching. On the contrary, we had to get discharged your

duties (responsibilities) from others. Hence it is proved that you are incapable (incompetent) to discharge the duties of this post.

(4) For the last many years, you had been assigned the subjects viz. Science and Maths of 10th Standard for teaching. But since the inception of the school - New English School, you have completely neglected your teaching work. For example ) in S.S.C. exam of March 1985, out of 88 students, to whom you have taught Mathematics subject, only 7 students got passed. Result is as low as 7.95%. Except Mathematics, results of other subjects are from 28.40% to 62.06%. Only because of your subject, result has gone down to such a low. You are entirely responsible therefor. Because of you standard of the school has diminished.

(5) During last two-three years, you have not discharged the duties entrusted to you as a 'Supervisor', as mentioned under the heading, "Duties of the Supervisor" in the

Service Conditions Rules. Hence it has caused hindrance in day to day affairs, and ultimately you have become instrumental for the lowering of the standard of the school.

(6) You have not discharged the responsibilities of the teachers as mentioned under the heading 'Duties of Teachers' in Condition of Service Rules, 1981, in the capacity of being subject teacher, therefore, your teaching work has been unsatisfactory and damaging from the view point of the students.

(7) You have not discharged the responsibilities which were entrusted to you in respect of Annual and half yearly examination of the year 1986. We had to get done the said work from others. Therefore, it is proved that you have deliberately committed dereliction and constant negligence in your duty.

(8) Though you had availed the casual leave directly without obtaining the prior permission of the Head Master and making any

written application therefor, on the date 14/10/1986, you sent a complaint application directly to the Education Officer Z.P. Kolhapur, with false allegations and misled the said office. Instead of approaching the school Committee or the institution, you only with an intention to disrepute the school rushed to the Education Office. Your said conduct is unfair.

(9) Complaints have been received against you in respect of your teaching and Home work exercise. You have not discharged both the said works (tasks) as per planning. As such the students have suffered a loss to a great extent. You have deliberately committed dereliction and constant negligence in your duty in this regard.

(10) From all the aforesaid allegations it is seen that there has been a complete negligence on your part in the school work (duty) of Janata High School, Shirol. You are constantly making endeavour and efforts to see that the students leave this school and join

(come in) your own school - New English School, Shirol. Therefore, you have not discharged and fulfilled moral duties and responsibilities of this school. You have caused loss to the students and school. From the view point of making progress of your own institution and school, you have caused impediment in the progress of this school.

(11) Because of your misconduct, moral turpitude act, constant and intentional dereliction of duty and incompetency to discharge duty, as referred to hereinabove, our school and students have suffered a loss to a great extent."

12A. It was not the case of the respondent during the enquiry proceedings that he wanted to adduce oral evidence in defence of his case. The documents submitted by the management were not disputed and same was the case with the documents he had submitted. The main charges against the respondent - teacher were (a) that he became Secretary of Shahu Shikshan Prasarak Mandal in 1979; (b) the said Trust

started a rival school by name New English School at a distance of about 500 ft. away from the petitioner no.2; (c) the said school was being run from 1983 onwards initially with one division in the joint family house of the respondent - teacher; (d) on account of his responsibilities as Honorary Secretary of the new Society and subsequently to run the newly started school, his attention in teaching got diverted and, therefore, it reflected in the poor result i.e. 7.95 per cent. The respondent - teacher admitted that he was Honorary Secretary of Shahu Shikshan Prasarak Mandal. He also admitted that the said Trust had started a school in 1983 and it was very much proved during the enquiry that it was being run in the joint family house of the respondent - teacher and his defence was found to be false. No documents were required when this was the admitted position. So far as the poor result is concerned, it was again on the basis of the documents and it was not disputed by the respondent - teacher. However, his explanation was that he was doing his best and if better results were required, right from the fifth standard more attention was required to be paid. This was by way of an afterthought and only to deny the charges, more so because for the earlier years

the results were satisfactory. On the face of this admitted position, it was not permissible for the School Tribunal to pick up the technical words in the rules and adopt a hypertechnical approach and to hold that the enquiry was vitiated, the management did not examine any witnesses and it was not known wherefrom the evidence in support of the management came so as to get the majority opinion holding the charges proved against the respondent - teacher. It was a totally perverse finding by the School Tribunal.

13. Even after the findings were submitted with majority and minority opinion and a consolidated report was supplied to the delinquent teacher and which was not disputed. The enquiry proceedings were also made available to him and duly signed by his representative. Failure of the management to lead oral evidence per se cannot be the violation of Rule 37(2)(a)(i) or Rule 37(2)(a)(ii). Compliance of Rule 37(4) was also duly done. The findings of the School Tribunal in the impugned decision are nothing short of conjectures and surmises. The teacher never complained that he was not given opportunity to defend his case in any of the proceedings held on 24th April 1987, 25th May 1987, 17th June 1987 and

5th July 1987. The record further shows that as and when he asked for adjournment, the same was granted. Even in the appeal memo he did not state anything about the lack of opportunity or that a reasonable opportunity was not given to him. Thus the findings of the School Tribunal on Issue Nos.3 and 4 are required to be quashed and set aside and they will have to be answered in favour of the management.

14. Now coming to the findings of the majority view, as noted earlier, most of the major charges were accepted by the respondent. His defence was that the new Society running the school could not be treated as an act of indiscipline on his part and so long as he was conducting the classes in the petitioner no.2 - school, he was not to be blamed. His representative who submitted a minority view by way of findings into the charges levelled against the teacher also followed the same premises. As per him there was no act of misconduct. As noted earlier, misconduct, incompetence and wilful negligence of duty have been defined in Rule 28(5). The behaviour of the teacher in starting and running a competing private school from his house and in the very proximity of petitioner no.2 - school may not amount

to an act of moral turpitude but certainly it violated the code of conduct, it amounted to the breach of the terms and conditions of service laid down under the Rules. Similarly the decline in the results during the academic years 1984-85, 1985-86 etc. clearly indicated that when the new school was started, the respondent - teacher was spending his energy and time on strengthening the said new school and he certainly neglected his duties under the petitioner no.2. He was guilty of dereliction in or failure to discharge his normal duties as a teacher under the petitioners. He also failed to keep up the academic progress of the school he was employed in and was being paid for and this was nothing short of incompetence on his part. Thus acts of misconduct, wilful negligence of duty and incompetence were proved against the respondent - teacher.

15. It must be noted at this stage that so long as the respondent - teacher was only the Secretary of the Trust, the petitioners had no objection and in fact in 1983 he was promoted to the post of Supervisor. He was probably emboldened by this reward granted to him and proceeded to open a competing school in the academic year 1983-84. It

was not too long ago when running a school by a public trust was treated to be a social service. But the same does not hold true now. Running a private educational institution, whether aided or unaided, is now recognised to be a vocation and it is obvious that the respondent - teacher fully engaged himself in this vocation while he was being paid the salary by the petitioners as a teacher on their roll. Thus while in employment under the petitioners, he engaged himself in another vocation. The charges proved against him were therefore, of serious nature and he lost the confidence of the management. In fact he could have himself examined his morality viz. while working with the petitioners and drawing salary as a full time teacher, he was in front of the whole village running a competing school from his own house and just at a distance of 500 ft. away from the school where he was drawing his salary from and this is the ideal he was placing before his pupils in both the schools. A teacher is a hero for the pupils and his qualities stand before them as an example of divinity. The acts on his part certainly indicated that he was unfit to be retained in service and the management did the right thing. They decided to dismiss him before it was too late. In his appeal

memo by furnishing the statistics regarding the students' strength in both the schools it was tried to be put up before the School Tribunal that opening of the new school has not adversely affected the petitioner no.2 - school. That is an issue which is totally irrelevant and it cannot be a defence for the delinquent - teacher. The majority view of the enquiry committee suffers from no errors and the report is based on an objective analysis of the admitted facts and circumstances.

. Mr.Masurkar, the learned counsel for the respondent submitted that the admissions made by the petitioners' advocate before the tribunal did not permit them to find faults with the impugned order. The concessions given or admisions allegedly made by an advocate, cannot change the position in law and the so called admissions had no bearing on the charges proved against the teacher and admitted by him indeed.

16. In the premises the findings of the tribunal are perverse and the reasoning is manifestly erroneous warranting interference under Article 227 of the Constitution. Hence the petition succeeds and

the same is hereby allowed. The impugned judgment and order of the School Tribunal is quashed and set aside and Appeal No.148 of 1987 stands dismissed. However, the amount of Rs.88,502/- deposited with the Registry of this Court and allowed to be withdrawn need not be refunded to the petitioners solely on account of the passage of time.

17. Rule made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J.)